

**Letter of Findings: 01-20191361  
Individual Income Tax  
For the Year 2018**

**NOTICE:** IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

**HOLDING**

Individual was not entitled to claim as a deduction on his 2018 Indiana income tax a repayment amount made to his insurance company.

**ISSUE**

**I. Individual Income Tax - Claim of Right Refund.**

**Authority:** IC § 6-3-1-3.5; IC § 6-3-2-1; [45 IAC 3.1-1-1](#); IC § 6-8.1-5-1; *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); *Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014).

Taxpayer argued that he should be entitled to a deduction of disability insurance back pay.

**STATEMENT OF FACTS**

Taxpayer is an individual who filed Indiana individual income tax returns for 2018. During that year Taxpayer received Social Security back pay. Taxpayer reported receiving approximately \$49,000 in disability payments from his insurance company prior to the Social Security back pay. Taxpayer paid Indiana income tax on that payment.

The Indiana Department of Revenue ("Department") disallowed the \$40,000 deduction and assessed Taxpayer additional income tax. Taxpayer disagreed with the assessment and submitted a protest to that effect. Taxpayer waived his right to an administrative hearing. This Letter of Findings results. Additional facts will be supplied as necessary.

**I. Individual Income Tax - Claim of Right Refund.**

**DISCUSSION**

All tax assessments are prima facie evidence that the Department's claim for the tax is valid, and each taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Thus, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012). In reviewing a taxpayer's argument, the Indiana Supreme Court has held, that when it examines a statute that an agency is "charged with enforcing . . . we defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party." *Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014).

According to Taxpayer, he is disabled and has been since 2016. Taxpayer's long-term disability provider from his employer made a payment to him regarding his disability in 2018. When he was awarded Social Security Disability he was required to pay back his long-term disability provider. Taxpayer provided a letter from his

long-term employer disability insurance and his Schedule 2 of his 2018 Indiana individual income tax return. These show that he paid back his insurance after receiving Social Security.

Indiana imposes an income tax on "the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person." IC § 6-3-2-1(a).

IC § 6-3-1-3.5 states as follows: "When used in [IC 6-3](#), the term 'adjusted gross income' shall mean the following: (a) In the case of all individuals 'adjusted gross income' (as defined in Section 62 of the Internal Revenue Code) . . . ." Thereafter, the statute specifies addbacks and deductions, peculiar to Indiana, which modify the federal adjusted gross income amount. The Department's regulation concisely restates the same formulary principal. [45 IAC 3.1-1-1](#) defines individual adjusted gross income as follows:

Adjusted Gross Income for Individuals Defined. For individuals, "Adjusted Gross Income" is "Adjusted Gross Income as defined in Internal Revenue Code § 62 modified as follows:

- (1) Begin with gross income as defined in section 61 of the Internal Revenue Code.
- (2) Subtract any deductions allowed by section 62 of the Internal Revenue Code.
- (3) Make all modifications required by [IC 6-3-1-3.5\(a\)](#).

The Department does not agree that Taxpayer is entitled under Indiana law to deduct the \$40,000 on his 2018 Indiana return. There is no statutory provision for taking itemized ("below-the-line") deductions unless specifically permitted under Indiana law. Taxpayer was unable to point to such a provision allowing him to deduct the repayment because there is none. From the information provided Taxpayer still needs to file an amended federal return adjusting his federal adjusted gross income to reflect the change. Then, he may file an amended Indiana return with the new adjusted gross income. This new adjusted gross income will reflect the above the line deduction Taxpayer is requesting.

#### FINDING

Taxpayer's protest is respectfully denied.

December 9, 2019

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